PETITIONERS' REPLY BRIEF

Supreme Court of the United States

OCTOBER TERM, 1959

No. 19

UNITED MINE WORKERS OF AMERICA, AND UNITED MINE WORKERS OF AMERICA, DISTRICT 28, *Petitioners*,

v.

BENEDICT COAL CORPORATION, *Respondent*.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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INDEX

Subject Index

Table of Cases Cited

Statutes

Miscellaneous

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FOREWORD

Petitioners will not attempt herein to reply *seriatim* to the arguments found in the brief of Benedict Coal Corporation.[1] Petitioners submit that the answers thereto are contained in their original brief; but Petitioners herein direct the Court's attention to basic and crucial fallacies appearing in Benedict's brief and in the Sixth Circuit's Opinion.

ARGUMENT

1.

Benedict admits (Br. 3) that the disputes which the Sixth Circuit held required processing under the griev-

[1] Herein Benedict Coal Corporation will be referred to as "Benedict".

ance machinery procedures of the Agreement were settled; but it complains that, "In all cases except the water strike Benedict tried to *arbitrate*[1] and they were turned down" (Br. 3). Therein lies a crucial fallacy in Benedict's position. The Agreement neither required nor contemplated that every dispute would or should be arbitrated. To the contrary, the settlement of disputes section (the grievance machinery procedures) enumerated several steps in the processing of settling disputes (R. 104a-5a). Arbitration was one of such steps and the *last* of them. The procedures expressly contemplated by the Agreement were that through bargaining the parties would undertake to effect a settlement short of the last step of arbitration. That is what Benedict had agreed to as a signatory to the Agreement; and in the instant case arbitration was obviated because the disputes were settled under the enumerated steps preceding arbitration.

2.

Benedict contends the rescission of the "no strike" and kindred clauses in the 1947 Agreement and the 1950 Agreement did no more than "merely [put] the parties in the same position as though there had been no previous 'no strike' clauses" (Br. 3-4, 5, 13-15). If Benedict means thereby that the bargaining history in the bituminous coal industry is to be ignored in the matter of interpreting the meaning of the Agreement, then of course Petitioners disagree therewith. Furthermore, Benedict's argument overlooks the fact and legal principle that in the absence of any waiver of the right to strike, such right exists, totally and unequivocally except as Congress has restricted such right in the Taft Hartley Act. Since Benedict points to Section 301 as authority for the instant action, Congress' mandate that

[1] Emphasis supplied.

> "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."[3]

is meaningful, as is the teaching of this Court in *NLRB* v. *Lion Oil Co.*, 352 U. S. 282, 293 (1957), that absent an express waiver, a waiver of the right to strike "is not to be inferred".[4]

Thus, it is manifest that the rescission of "no strike" and kindred clauses in the 1947 and 1950 Agreements must be interpreted in the light of the congressional policy above noted, the judicially-recognized and declared right to strike, and this Court's negation of judicial authority in the absence of an *express* waiver to infer a waiver of such right in such circumstances. When so interpreted, Benedict's denial and challenge (Br. 3-4, 5, 13-15) that the 1950 Agreement by affirmative recitals made it positive that a strike or work stoppage was no longer a violation of the collective bargaining agreement are shown to be clearly erroneous.

The Sixth Circuit itself rejects Benedict's argument. It specifically recognized that "the 'no strike' provisions of the previous contract were superseded" (R. 764) and that the right to strike "was expressly preserved in the 1950-52 agreement" (R. 766); but it further—and erroneously—declared that such right "was preserved with respect to all disputes not subject to settlement by other methods made exclusive by the agreement". Since the Agreement did not so recite, and since the earlier no-strike and related covenants had been totally and unequivocally rescinded, it is obvious that, to reach its con-

[3] Section 13, Labor Management Relations Act, 1947 (29 USCA 163).
[4] See also discussion in Petitioners' original brief, pp. 21-23.

clusion, the Sixth Circuit had to imply such a restriction. As noted, the no-strike and related covenants had been completely removed from the Agreement by affirmative recitals that they were rescinded and made null and void. With such clear and positive restitution of the right to strike, what justification could the Sixth Circuit have for implying something in the Agreement which the parties had specifically, positively, unequivocally and totally removed from the contract? In Petitioners' original brief (p. 23), they pointed out that in implying a covenant not to strike the Sixth Circuit had violated the rule which prohibits a tribunal from reforming and emasculating a contract so as to have it "conform to" its "idea of correct policy" as well as the principle which interdicts the right of a court to imply terms which "are inconsistent with express provisions".[5] This Court has declared that "an express contract speaks for itself and leaves no place for implications". *Klebe* v. *U. S.*, 263 U. S. 188, 192. The Tenth Circuit expressed the rule in *Shell Petroleum Corp.* v. *Shore*, 10 Cir., 72 F. 2d 193, 195 (1934), in this fashion:

> "An 'implied obligation' is one reasonably inferred from the circumstances or acts of the parties. No such obligation can be inferred or implied if it is in conflict with a provision of an express contract. In such circumstances the existence of an implied provision is conclusively rebutted."

Accord: *Hawkins* v. *U. S.*, 96 U. S. 689; *United States of America* v. *Ahearn*, 9 Cir., 231 F. 2d 353, 356 (1955); *Refinery Employees' Union* v. *Continental Oil Co.*, DC, W.D. La., 1958, 160 F. Supp. 723, 731.

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[5] Authorities cited are *Colgate-Palmolive-Peet Co.* v. *NLRB*, 338 U. S. 355, 363; 12 Am. Jur., Contracts, Section 239, pp. 767-8; *Ferroline Corp.* v. *General Aniline & Film Corp.* 7 Cir., 207 F. 2d 912, 926.

In its brief, Benedict does not deny the validity of Petitioners' argument.

Other changes in the 1947 and 1950 Agreements proclaim the Sixth Circuit's error and the invalidity of Benedict's contentions.

Under the "Settlement of Disputes" section of the 1941 and 1945 contracts, it was expressly provided that "Pending the hearing of disputes, the Mine Workers shall not cease work because of any dispute" (R. 124a). In addition, the "Illegal Suspension of Work" section of the earlier contracts also provided that "A strike or stoppage of work on the part of the Mine Workers shall be a violation of this Agreement" and that "Under no circumstances shall the Operator discuss the matter under dispute with the Mine Committee or any representative of the United Mine Workers of America during suspension of work in violation of this Agreement" (R. 125a).

The spectre of damage actions sanctioned by the Act's Section 301 resulted in changes in the 1947 Agreement which were continued in the 1950 Agreement. The provision which barred strike activity during the hearing of disputes was omitted from the grievance procedure provisions of the 1947 and 1950 Agreements. An operator could no longer look at the provisions for settling disputes and assert that a contractual obligation (namely, that pending the hearing of disputes, the Mine Workers shall not cease work because of any dispute) had been violated and that such breach warranted a damage action.

By express language found in the 1947 and 1950 Agreements, the "Illegal Suspension of Work" clauses above noted were "rescinded, cancelled, abrogated and made null and void" (R. 106a). Thus, signatory operators could no longer point to such clauses and assert that thereby

strike activity would be a contract violation. Nor could the operator refuse to discuss a dispute, for not only had the proscription against his so doing been cancelled but the parties agreed that "any and all disputes, stoppages" should be determined exclusively by grievance machinery procedures (R. 106a), thereby requiring signatory operators to participate in the settlement of disputes; but in this connection and significantly there had been removed from such procedures the covenant that pending such procedures there would be no strike activity.

Thus, what the parties specifically deleted from the grievance procedures, namely, that pending settlement of disputes there would be no strike activity, the Sixth Circuit, by its interpretation and by implication, has read back into the Agreements. Had the parties intended to do that which the Sixth Circuit has proclaimed, there would have been no need to remove the deleted covenant from the Settlement of Disputes section. The result of the Sixth Circuit's holding is to restore into the contract by implication, contrary to the cases heretofore noted, that which the contracting parties specifically deleted from it. And, it is noteworthy that in reaching its erroneous conclusion, the Sixth Circuit avoided any consideration of these deletions.

In light of the Unions' purpose to rid themselves of contractual obligations not to engage in stoppages and thus avoid damage actions sanctioned in Section 301 for breach of such obligations, the Sixth Circuit's conclusion thwarts and frustrates that purpose and repudiates the contracting parties' intention clearly mirrored by their agreement that the no strike and related covenants were rescinded and that the requirement of working pending

the settlement of disputes was no longer a contractual obligation.

Both the Sixth Circuit and Benedict in its brief (p. 8, 10) indulge in the bald error that a strike is an *alternative* procedure to settle a dispute.[*] Actually, a strike, which has been juridically defined as a lawful economic instrument, does not of itself resolve disputes. As said in *W. L. Mead, Inc.* v. *Int. Bro. of Teamsters,* DC, Mass., 1954, 126 F. Supp. 466, 467, ". . . a strike never 'adjudicates' anything." Rather, settlement of disputes is achieved through the process of collective bargaining and that is precisely what occurred in the instant case when the disputes were settled in accordance with the grievance machinery procedures. As Petitioners have asserted in their original brief (p. 23), it is one thing to agree to process disputes under the grievance machinery provided for in the contract. It is an entirely different matter to say that thereby there is a covenant not to resort to strike activity pending settlement under such machinery. In *Textile Workers Union of America* v. *NLRB*, DC Cir., 227 F. 2d 409, 410, it is said:

> "There is not the slightest inconsistency between genuine desire to come to an agreement and use of economic pressure to get the kind of agreement one wants."

When it was the parties' intention, as plainly expressed in the 1941 and 1945 Agreements, to interdict stoppages pending dispute settlements under the grievance procedures, the parties demonstrated that they knew how to effectuate such intention in clear and positive language. The very fact that the earlier contracts proscribed strike activity pending settlement procedures

[*] Benedict complains (Br. 6, 9, 13) of the use of strikes to settle disputes or enforce demands.

sustains the distinction and that the Agreements' signatories recognized it. Had operators intended that grievance machinery procedures, should preclude strike activity pending settlement thereunder, there would have been no reason for the covenant not to strike pending settlements in the earlier contracts. Having deleted that requirement in contracts beginning in 1947 when Section 301 was enacted, its absence is a positivism that the result reached by the Sixth Circuit was not the intent of the Agreement's signatories and, particularly so, in light of the Unions' reasons and purposes for changing the terms of the bargaining agreements, already referred to herein (*ante*, p. 5) and in Petitioners' original brief (pp. 15-17). Nor does the word "exclusively" used in subsection 3 detract from the foregoing argument. In the absence of grievance procedures to solve disputes arising under the bargaining contract, settlement thereof could involve costly and lengthy court litigation. Realizing the large number of disputes that arise under a collective bargaining agreement, involving numerous employees, signatories to the Agreement sought some practical method short of recourse to the courts whereby disputes, stoppages, suspensions of work, etc., should be settled. To assure that settlement would be in accordance with the grievance procedures, rather than through court action, the signatories employed the word "exclusively".

To sustain the Sixth Circuit's erroneous holding based upon faulty reasoning, Benedict points (Br. 9-11) to the rule that requires all provisions of a contract to be read as a whole and so interpreted as will render the whole agreement operative. Petitioners agree with the rule;

Mastro Plastics Corp. v. *NLRB*, 350 U. S. 270, 279.

but the implementation of that rule does not justify a distortion of the agreement which the parties themselves have reached. Certainly it does not harmonize the total and unequivocally complete cancellation of the no strike clauses which the Sixth Circuit agrees preserved the right to strike with its contradictory conclusion that it was not preserved as to disputes which fell within the scope of the grievance machinery. See *International Union, UMWA* v. *NLRB*, DC Cir., 257 F. 2d 211, 217. The Sixth Circuit declared that it was "spontaneous" or "wildcat" strikes that the agreement made subject to the settlement procedures (R. 767), despite the contract's language that "all disputes, stoppages" were to be settled thereunder (R. 129a). Moreover, petitioners insist that not only is the contract to be read in its entirety, they insist that in determining the meaning of the contract and the intention of the signatories thereto, the language of previous collective bargaining agreements and the changes effected in the 1947 and 1950 Agreements, both in the affirmative recitals therein and the matters which the signatories purposefully and deliberately omitted therefrom, as well as the reasons therefor and the purposes sought to be achieved because of Congress' adoption of the Act's Section 301, must be considered since necessarily they give basic content to the meaning of the language under scrutiny. Neither the Sixth Circuit in its opinion nor Benedict in its brief concerned itself with such pertinent indicia and factors. Contrariwise, the District of Columbia Circuit, in its interpretation of the 1952 Agreement, found the " 'legislative history' of the agreement in question . . . interesting and enlightening", and declared that from the bargaining history "must be

deduced the meaning of the contract". *International Union, UMWA* v. *NLRB*, DC Cir., 257 F. 2d 211, 217.[6]

3.

Abortive too is Benedict's assertion, not adopted by the Sixth Circuit, that "The interpretation which the parties themselves have put upon the 1950 contract indicates that strikes for dispute settling purposes were considered violations of the contracts" (Br. 5, 11). Benedict points (Br. 11-12) to a letter directive dated October 24, 1951, from the UMW officers to members, committeemen and officers of local unions which expresses UMW's policy concerning unauthorized strikes. Therein UMW officers complained of unauthorized strikes because, *unlike the instant case*, the grievance machinery procedures of the contract were not invoked (Ex. 31, R. 499a-501a). UMW urged "all members, local union officers and committeemen, district and international

[6] In seeking to dissipate the effectiveness of *International Union, UMWA* v. *Board*, *supra*, Benedict (Br. 15) states the District of Columbia Circuit "gave no effect to subdivision 3 of the miscellaneous clauses of the 1950 agreement and termed it a mere 'gentleman's agreement'". Actually that portion of the Court's opinion was concerned with subsection 3 of the Miscellaneous section of the 1952 Agreement. The National Labor Relations Board had urged that the covenant in that subsection "to maintain the integrity of the contract" was meaningless unless read as an undertaking to use the contract machinery, and no other method, as the means of resolving disputes. The Court interpreted the language to be a "gentleman's agreement" that the desirable way to settle disputes was by use of the grievance machinery and that the Union's responsible officials would do their best to see that that procedure was followed and would put such pressure as seemed to them to be wise and likely effective upon Union members to induce or coerce them from striking. It said, "It is likely that the agreement has been of great benefit to the operators and the union and that most disputes have been resolved by the use of the grievance machinery" (257 F. 2d 218), which is what occurred in the situations depicted in the instant record. Further, neither the Sixth Circuit's opinion nor the District Court's charge (R. 729a) used the "integrity" clause as a basis for holding Petitioners liable.

officials to not only refrain from participation in these unauthorized strikes, but to use their efforts and influence to prevent occurrence of said unauthorized strikes *in contravention of the International Constitution and in direct opposition to the established policies of the United Mine Workers of America*". It is pertinent, Petitioners submit, that the directive does not state such unauthorized strikes are in contravention of the collective bargaining agreement.

CONCLUSION

For the reasons set forth herein and those which are set forth in Petitioners' original brief, Petitioners submit that they are entitled to the relief sought in such original brief.

Respectfully submitted,

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